

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

MidAmerican Energy Company, Nicor	)	
Energy, L.L.C., AES New Energy, Inc.,	)	
and the National Energy Marketers	)	
Association	)	
	)	02-0290
Request for expedited rulemaking	)	
regarding telephonic and internet	)	
enrollment procedures consistent with	)	
§2EE of the Consumer Fraud and	)	
Deceptive Business Practices Act.	)	

**BRIEF ON EXCEPTIONS OF PEOPLES ENERGY SERVICES CORPORATION**

Pursuant to 83 Illinois Administrative Code Section 200.830, Peoples Energy Services Corporation ("PE Services"), by one of its attorneys, Timothy P. Walsh, hereby submits this Brief on Exceptions ("BOE") to the Administrative Law Judge's Proposed Order ("ALJPO") in the above-entitled cause which was served on August 28, 2002.

During the proceeding that led to the ALJPO, PE Services submitted both Initial Comments and a Response to Staff's Motion to Dismiss pursuant to the Administrative Law Judge's ("ALJ") schedule. PE Services believes the ALJ's inclusion and exclusion of comments submitted by parties has provided for a more clear, efficient and useful rule over earlier versions. PE Services submits this BOE to recommend corrections of typographical errors or inconsequential changes. Language changes to Part 453 and the ALJPO are included in Appendix A and Appendix B, respectively.

Respectfully submitted,

By \_\_\_\_\_  
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An Attorney for  
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Dated September 23, 2002

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## Proposed Changes to Commission's Proposed Part 453 Internet Enrollment Rules

For the reasons set forth in PE Services Brief on Exceptions above, the proposed Part 453 language contained in Appendix A to the ALJPO should be changed as follows:

### Section 453.10. Definitions

- a. ~~a.~~ *"Alternative Retail Electric Supplier (ARES)" has the same meaning as in Section 16-102 of the Public Utilities Act (220 ILCS 5/16-102)*
- b. *"Electronic Signature"* shall mean an electronic sound, symbol, or process attached to or logically associated with a ~~Letter of Authority (LOA)~~ and executed by a person with the intent to sign the LOA. A recording of oral assent is not an electronic signature.
- c. ~~b.~~ *"Encryption"* shall mean to convert information (especially a message) from one system of communication into another in a manner that allows the information to later be converted back into its original form.
- d. ~~c.~~ *"Internet Enrollment"* means any electronic record of a Customer's authorization to change electric service providers, which satisfies the disclosure requirements of the Letter of Agency prescribed in 815 ILCS 505/2EE.
- e. ~~d.~~ *"Letter of Authority (LOA)"* shall mean the document described in 815 ILCS 505/2EE and referenced in 220 ILCS 5/16-115A.
- f. *"Local Distribution Company (LDC)" means the electric utility, as defined in Section 16-102 of the Public Utility Act (220 ILCS 5/16-102), that provides delivery services to the customer being enrolled.*
- g. ~~e.~~ *"Retail Electric Supplier (RES)"* shall mean either: (i) an ~~Alternative Retail Electric Supplier (ARES) certified by the ICC pursuant to Section 16-115 of the Public Utilities Act (220 ILCS 5/16-115), meeting all obligations of ARES pursuant to Section 16-115A of the Public Utilities Act (220 ILCS 5/16-115A), and authorized to provide electric power and energy supply services in an LDC's service territory;~~ or (ii) an Illinois "electric utility" as defined in Section 16-102 of the Public Utilities Act (220 ILCS 5/16-102) ~~meeting all obligations provided in Section 16-115A and 16-116 of the Public Utilities Act (220 ILCS 5/16-115A, 220 ILCS 5/16-116),~~ other than the LDC.

~~h.~~ ~~f.~~ "Retail Customer (Customer)" shall have the same meaning as that stated in Section 16-102 of the Public Utilities Act.

#### Section 453.20. Internet Enrollments

- a. For all Internet Enrollments, authorization to switch electric service providers shall be obtained by encrypted Customer input on a provider's Internet website.
- b. The Internet Enrollment website shall at a minimum provide:
  - i. A copy of the RES provider's customer contract, including all the terms and conditions of services being provided, which include:
    - (a) Price for each service being provided;
    - (b) Aa complete description of each service being provided;
    - (c) Contract term;
    - (d) Any fees for cancellation prior to contract termination date;
    - (e) Any material limitations, conditions, or exclusions;
    - (f) Any fees or costs to the Customer;
    - (g) If applicable, whether a credit check and/or deposit will be required, including amount of deposit; ~~and~~
    - (h) Identity of party who will bill for the RES provider's service(s);~~;~~
    - (i) By what means any future correspondence will be sent;
    - (j) That the Customer may opt to receive a written copy of the contract;
    - ~~(k) ~~(k)~~ Whether the eCustomer will receive a bill from both the ARES and the electric utility, or receive a single combined bill; and,~~
    - (l) A conspicuous statement, within the body of the electronic version of the contract, that residential Customers may cancel the enrollment within 3 business days of the Internet Enrollment.
  - ~~ii. A conspicuous statement, within the body of the electronic version of the contract that residential customers may cancel the enrollment within 3 business days of the Internet Enrollment.~~
  - iii. A prompt for the Customer to print or save a copy of the contract.
  - iv. That Aany electronic version of the contract shall be identified by a version number, in order to ensure the ability to verify the particular contract to which the Customer assents.

- c. Following the Internet Enrollment, the RES shall:
  - i. Retain the Internet Enrollment for a period of no less than two years.
  - ii. Provide a copy of the Internet Enrollment information to the [IGG Commission](#) or its Staff and the Customer's LDC upon request.

Section 453.30. Criteria by which to judge the validity of an [LOA](#) Electronic Signature:

- a. An electronic signature should indicate who signed the LOA.
- b. An electronic signature should be unique to the signer.
  - i. A security procedure shall require unique and private information from the signer.

These may include:

- (a) algorithms or codes
- (b) identifying words or numbers previously established or sent to signer's registered e-mail account, [and](#)
- (c) credit card verification

These may not include information that is also necessary to effect a switch of suppliers.

- ii. No party may use [a](#) signer's unique information disclosed under this section for any marketing or billing purposes without specific separate consent.
  - iii. The security procedure must be provided on a securely encrypted web page.
- c. An electronic signature must reliably indicate the date of the signature.
- d. Affixing an electronic signature to an LOA must be a separate affirmative act.
- e. The LOA must be on a separate screen or webpage

Section 453.40. Method by which the authentication of LOA Electronic Signatures may be ~~p~~Proven by a ~~Supplier~~RES:

- a. The electronically signed LOA must provide:
  - i. The unique information used to sign the LOA
  - ii. The date signed
- b. The party seeking to prove the LOA's authenticity must show:
  - i. That the LOA was signed by the Customer on the date claimed by showing that the unique identifier used to sign the LOA and the date it was signed is embedded in the LOA, and
  - ii. The electronically signed LOA has not been altered since the date of signing.

Section 453.50. Additional requirements for an electronic LOA:

- a. ~~By virtue of being in electronic form, a~~An electronic LOA must provide the following additional information:
  - i. by what means any future correspondence between the Customer and supplier will be sent.
  - ii. Whether the Customer has the option to receive correspondence via the United States Post or electronic means.
  - iii. That the eCustomer may opt to receive a written copy of the contract.
- b. Electronic LOAs shall be retained for a period of at least two years after duration-termination or expiration of the ~~contract~~LOA.

## Proposed Changes to the ALJPO

For the reasons set forth in PE Services Brief on Exceptions above, the ALJPO should be changed as follows:

### **I. PROCEDURAL HISTORY AND NATURE OF FILING**

Petitions for leave to intervene were filed by Illinois Power Company ("IP"); Blackhawk Energy Services, L.L.C.; Peoples Energy Services Corporation ("[Peoples Energy](#)"); People of the State of Illinois ("People"); Commonwealth Edison Company ("ComEd"); Central Illinois Light company ("CILCO"); Cook County State's Attorney; and Citizens Utility Board ("CUB"). All petitions for leave to intervene are granted.

### **II. PROPOSED RULES REGARDING TELEPHONIC ENROLLMENT**

#### **A. Marketers' Position**

Marketers argue that the Commission is vested with the authority to approve the form and manner of the verifiable authorization form the customer, provided that form and manner is consistent with Section 2EE of the Consumer Fraud and Deceptive Business Practices Act ("Fraud Act") (815 ILCS 505/2EE). Marketers further argue that the enactment of the Illinois Electronic Commerce and Security Act ("ECSA") (51CLS 175 1-101 et. seq.) and the federal Electronic Signatures in Global and National Commerce Act of 2000 (E-Sign) provide support for a departure from the purely "wet" signatures.

#### **D. Peoples Energy's Position**

Peoples Energy argues that Staff has not established a substantive basis for declaring telephonic enrollment illegal. Peoples Energy notes that the Commission has approved telephonic enrollment for gas and finds Staff's opposition to be inconsistent. Peoples Energy believes that when read together, the Fraud Act, ECSA and E-Sign allow telephone enrollment. Peoples Energy asserts that Staff has failed to demonstrate how the telephonic enrollment methodology is inconsistent with Section 2EE.

#### **E. Commission Conclusions**

The Commission is of the opinion that the proposed rulemaking allowing for telephonic enrollment [should](#) be dismissed.

### **III. PROPOSED RULES REGARDING INTERNET ENROLLMENT**

## **E. Peoples Energy's Position**

Peoples Energy argues that the petition is a more efficient method for addressing the Commission's DST directives, than requiring [changes to](#) 9 different tariffs. Peoples Energy asserts that Staff has confused the issues [concerning whether internet enrollment is appropriate by focusing on its preference to tariff changes over a rulemaking](#). Peoples Energy argues that a rulemaking is appropriate for approving internet enrollment procedures.



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**NOTICE OF FILING AND CERTIFICATE OF SERVICE**

To: Service List

PLEASE TAKE NOTICE that on this 23<sup>rd</sup> day of September 2002, I have filed with the Chief Clerk of the Illinois Commerce Commission, a Brief on Exceptions of Peoples Energy Services Corporation, a copy of which is hereby served upon each of the parties of record in Docket No. 02-0290 by e-mail, U.S. Mail, or personal delivery.

Dated at Chicago, Illinois this 23<sup>rd</sup> day of September 2002.

By \_\_\_\_\_  
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